

§ 107.313

49 CFR Ch. I (10–1–07 Edition)

of any money due the United States as a result of the proceeding.

(c) The Office of Chief Counsel may amend a notice of probable violation at any time before issuance of a compliance order or an order assessing a civil penalty. If the Office of Chief Counsel alleges any new material facts or seeks new or additional remedial action or an increase in the amount of the proposed civil penalty, it issues a new notice of probable violation under this section.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended at 50 FR 45730, Nov. 1, 1985; Amdt. 107–24, 56 FR 8624, Feb. 28, 1991; Amdt. 107–32, 59 FR 49131, Sept. 26, 1994; Amdt. 107–35, 60 FR 49108, Sept. 21, 1995; Amdt. 107–36, 61 FR 7184, Feb. 26, 1996]

§ 107.313 Reply.

(a) Within 30 days of receipt of a notice of probable violation, the respondent must either:

(1) Admit the violation under § 107.315;

(2) Make an informal response under § 107.317; or

(3) Request a hearing under § 107.319.

(b) Failure of the respondent to file a reply as provided in this section constitutes a waiver of the respondent's right to appear and contest the allegations and authorizes the Chief Counsel, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and issue an order directing compliance or assess a civil penalty, or, if proposed in the notice, both. Failure to request a hearing under paragraph (a)(3) of this section constitutes a waiver of the respondent's right to a hearing.

(c) Upon the request of the respondent, the Office of Chief Counsel may, for good cause shown and filed within the 30 days prescribed in the notice of probable violation, extend the 30-day response period.

§ 107.315 Admission of violations.

(a) In responding to a notice of probable violation issued under § 107.311, the respondent may admit the alleged violations and agree to accept the terms of a proposed compliance order or to pay the amount of the preliminarily assessed civil penalty, or, if proposed in the notice, both.

(b) If the respondent agrees to the terms of a proposed compliance order, the Chief Counsel issues a final order prescribing the remedial action to be taken by the respondent.

(c) Payment of a civil penalty, when the amount of the penalty exceeds \$10,000, must be made by wire transfer, through the Federal Reserve Communications System (Fedwire), to the account of the U.S. Treasury. Detailed instructions on making payments by wire transfer may be obtained from the Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

(d) Payment of a civil penalty, when the amount of the penalty is \$10,000 or less, must be made either by wire transfer, as set forth in paragraph (c) of this section, or certified check or money order payable to “U.S. Department of Transportation” and submitted to the Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

[Amdt. 107–11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107–23, 57 FR 45453, Oct. 1, 1992; Amdt. 107–29, 58 FR 51527, Oct. 1, 1993; Amdt. 107–38, 61 FR 21100, May 9, 1996; 68 FR 52848, Sept. 8, 2003]

§ 107.317 Informal response.

(a) In responding to a notice of probable violation under § 107.311, the respondent may submit to the official who issued the notice, written explanations, information, or arguments in response to the allegations, the terms of a proposed compliance order, or the amount of the preliminarily assessed civil penalty.

(b) The respondent may include in his informal response a request for a conference. Upon the request of the respondent, the conference may be either in person or by telephone. A request for a conference must set forth the issues the respondent will raise at the conference.

(c) Upon receipt of a request for a conference under paragraph (b) of this section, the Chief Counsel's Office, in consultation with the Associate Administrator, arranges for a conference

as soon as practicable at a time and place of mutual convenience.

(d) The respondent's written explanations, information, and arguments as well as the respondent's presentation at a conference are considered by the Chief Counsel in reviewing the notice of probable violation. Based upon a review of the proceeding, the Chief Counsel may dismiss the notice of probable violation in whole or in part. If he does not dismiss it in whole, he issues an order directing compliance or assessing a civil penalty, or, if proposed in the notice, both.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-23, 56 FR 66157, Dec. 20, 1991; 66 FR 45377, Aug. 28, 2001]

§ 107.319 Request for a hearing.

(a) In responding to a notice of probable violation under § 107.311, the respondent may request a formal administrative hearing on the record before an Administrative Law Judge (ALJ) obtained by the Office of the Chief Counsel.

(b) A request for a hearing under paragraph (a) of this section must:

(1) State the name and address of the respondent and of the person submitting the request if different from the respondent;

(2) State which allegations of violations, if any, are admitted; and

(3) State generally the issues to be raised by the respondent at the hearing. Issues not raised in the request are not barred from presentation at the hearing; and

(4) Be addressed to the official who issued the notice.

(c) After a request for a hearing that complies with the requirements of paragraph (b) of this section, the Chief Counsel obtains an ALJ to preside over the hearing and notifies the respondent of this fact. Upon assignment of an ALJ, further matters in the proceeding generally are conducted by and through the ALJ, except that the Chief Counsel and respondent may compromise or settle the case under § 107.327 of this subpart without order of the ALJ or voluntarily dismiss the case under Rule 41(a)(1) of the Federal Rules of Civil Procedure without order of the ALJ; in the event of such a compromise, settlement or dismissal, the

Chief Counsel expeditiously will notify the ALJ thereof.

(d) At any time after requesting a formal administrative hearing but prior to the issuance of a decision and final order by the ALJ, the respondent may withdraw such request in writing, thereby terminating the jurisdiction of the ALJ in the case. Such a withdrawal constitutes an irrevocable waiver of respondent's right to such a hearing on the facts, allegations, and proposed sanction presented in the notice of probable violation to which the request for hearing relates.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended at 48 FR 17094, Apr. 21, 1983; Amdt. No. 107-19, 54 FR 22899, May 30, 1989]

§ 107.321 Hearing.

(a) To the extent practicable, the hearing is held in the general vicinity of the place where the alleged violation occurred or at a place convenient to the respondent. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.

(b) Hearings are conducted in accordance with the Federal Rules of Evidence and Federal Rules of Civil Procedure; however, the ALJ may modify them as he determines necessary in the interest of a full development of the facts. In addition, the ALJ may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by § 105.45;

(3) Adopt procedures for the submission of motions, evidence, and other documents pertinent to the proceeding;

(4) Take or cause depositions to be taken;

(5) Rule on offers of proof and receive relevant evidence;

(6) Examine witnesses at the hearing;

(7) Convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;

(8) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and

(9) Take any other action authorized by, or consistent with, the provisions of this subpart and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.